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HUMAN RIGHTS SUBCOMMISSION TAKES UP ADMINISTRATION OF JUSTICE

Hears Address by Vice-Chairman of Commission on Human Rights

Three members of the Subcommission on Prevention of Discrimination and Protection of Minorities this morning introduced their reports on states of emergency, impunity for perpetrators of human rights violations, and the independence of the judiciary, as that body began its consideration of the administration of justice and the independence of the judiciary.

The administration of justice is a broad topic which has been discussed by the Subcommission for many years. A number of important studies in this field have been undertaken by the Special Rapporteurs of the Subcommission. They include the protection of staff members of the United Nations, the application of international standards concerning the human rights of detained juveniles, states of emergency, right to a fair trial, and privatization of prisons.

The Subcommission also heard a presentation of the report of the Working Group on Detention by its Chairman, El Hadji Guissé.

Ronald Walker (Australia), Vice-Chairman of the Commission on Human Rights, addressed the Subcommission this morning. He said that with the intensified focus on human rights in recent years, attention should be given to the institutional means available to the international community to channel activities in this field. The relationship between the Commission and the Subcommission was of vital importance, since they were the most important United Nations organs active in human rights.

The observers of the following Governments exercised their right of reply: Turkey, Guatemala, Yugoslavia, Azerbaidjan, India, Thailand, Nigeria, Portugal and Indonesia.

(more)

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The representative of United Nations Office at Vienna also made a statement.

The expert from Morocco drew attention to a document she had found on her desk which contained information on Tamils. Where had the document come from and who had distributed it? The Subcommission was not here to support either terrorist groups or organizations which violated human rights. She asked the Secretariat to prevent the distribution of such documents in the future.

When it meets again at 3.00 p.m. this afternoon, the Subcommission will continue its debate on the administration of justice and the independence of the judiciary.

Address by Human Rights Commission Vice-Chairman

RONALD WALKER (Australia), Vice-Chairman of the Commission on Human Rights, said that events over the past few years had brought human rights to the centre of contemporary issues. Along with the intensified focus on human rights, attention should be given to the institutional means available to the international community to channel activities in human rights and to bring about improvements in human rights observance. The Commission on Human Rights and the Subcommission were the two most important organs of the United Nations active in human rights, therefore the relationship between them was of vital importance.

The Commission gave annual consideration to the recommendations of the Subcommission. It did, however, have some concern about the overlap of work between the two bodies and felt that more harmony was needed. In its debates and resolutions, the Commission had made some suggestions for rationalizing and streamlining the work of the Subcommission, he added.

These suggestions related, first, to the necessity for impartiality and objectivity on the part of the Subcommission and independence on the part of its members and alternates. They also concerned the preparation of studies, reports and draft international instruments, which were perceived as one of the most important of the Subcommission's technical tasks. The Commission was convinced that if the Subcommission rationalized the number of its studies and tried to avoid embarking on others until those previously authorized had been completed, it would enable members of the Subcommission to make more thorough comments and suggestions.

The Commission had also made some suggestions with respect to the conduct of the Subcommission's work. While expressing its appreciation of the Subcommission's constructive contribution, the Commission had noted the growing number of decisions and resolutions adopted by the Subcommission every year. From some points of view, that number had been considered excessive. The Commission had urged the Subcommission to concentrate its attention on those specific human rights issues to which it could make a significant contribution, in view of its character as an expert body. It considered it desirable as a general rule to avoid any proliferation of studies, draft resolutions or decisions on issues already being dealt with by the Commission.

The Commission had particularly welcomed the proposal for the establishment of an intersessional Working Group to discuss the issues and present specific proposals for improvement to be decided upon by the Subcommission at its present session. In view of the increase and the complexity of human rights problems which the Commission and the Subcommission were facing, it was in the interest of both organs to move towards a better articulation of their work, he stated.

Administration of Justice and Human Rights of Detainees

Under this agenda item, the Subcommission has before it a number of studies and reports. The final report by Mary Conception Bautista on the protection of the human rights of United Nations staff members, experts and their families (document E/CN.4/Sub.2/1992/19) contains a list of staff members whose rights have been violated. The Special Rapporteur notes that the issue has drawn increasing international attention in recent years and expresses the view that a more open information campaign is one effective means to combat this abhorrent practice which runs counter not only to the lofty principles contained in the Charter and the subsequently concluded relevant agreements between States and organizations, but also brings international cooperation into jeopardy.

Another report by Mrs. Bautista is on the application of international standards concerning the human rights of detained juveniles (E/CN.4/Sub.2/1992/20). It contains an overview of the pertinent international standards and of efforts by States to implement them.

The report of the Working Group on Detention (E/CN.4/Sub.2/1992/22) describes the meeting of the Working Group, which took place on 5 and 6 August It contains information on various issues discussed by the Group, including a review of developments concerning the human rights of persons subjected to any form of detention or imprisonment, habeas corpus as a non-derogable right, the death penalty, juvenile justice and privatization of prisons.

Another report (E/CN.4/Sub.2/1992/23) presented by Special Rapporteur, Leandro Despouy, is the fifth annual report and list of States which, since 1 January 1985, had proclaimed, extended or terminated a state of emergency. The report also describes various actions taken by the Special Rapporteur in specific cases, such as the declaration of a state of emergency in the former Soviet Union from 19 to 22 August 1991 and in Peru on 5 April 1992.

Also before the Subcommission is the third report of Stanislav Chernichenko and William Treat on (E/CN.4/Sub.2/1992/24 and Add.1-3), on the right to a fair trial: current recognition and measures necessary for its strengthening, a working paper on the privatization of prisons (E/CN.4/Sub.2/1992/21), and a working document, prepared by El Hadji Guisse and Louis Joinet, on the question of the impunity of perpetrators of human rights violations (E/CN.4/Sub.2/1992/18).

Independence of Judiciary

The Subcommission had before it the report on the independence of the judiciary and the protection of practising lawyers, prepared by Louis Joinet (E/CN.4/Sub.2/1992/25 and Add.1) The report provides detailed information on measures and practices adopted by various countries that are either aimed at strengthening the safeguards of independence and protection or serve to weaken the safeguards.

The addendum contains the conclusions and recommendations of the Rapporteur. According to Mr. Joinet, there is an obvious cause-and-effect relationship between the extent of the shortcomings of the judiciary and the degree of intensity of human rights violations. He lists some safeguards which strengthen the independence of the judiciary. These include safeguards against pressure, under a state of emergency, statutory safeguards, those relating to the practice of the profession and those relating to the freedom of expression. Mr. Joinet pays tribute to all judges and lawyers, who, at the cost of severe persecution, had endeavoured to ensure that the law and equity prevail over violence and oppression.

Statement

KURT NEUDEK, representative of the United Nations Crime Prevention and Criminal Justice Branch, said that the Branch had a keen interest in cooperating with the Human Rights Centre and recalled that a draft resolution had been submitted to the Economic and Social Council that requested the Secretary-General to enforce such cooperation. This would strenghthen existing mechanisms for the protection of human rights in the administration of justice. He offered suggestions as to how this cooperation could be carried out and cited examples of previous collaborative efforts. The Branch had a strong interest in contributing to the 1993 World Conference on Human Rights because it was an opportunity to emphasize the need for the protection of human rights in all facets of criminal justice practice in accordance with General Assembly mandates. The initiative to strengthen cooperation even further was reflected in the report of the inter-sessional Working Group which had proposed that the Branch take part in various human rights meetings to examine items of the various agendas which might be of interest to it. He hoped that the Subcommission would consider these proposals favourably.

Rights of Reply on Human Rights Violations

AYDIN SELGIN (Turkey) provided information on a bill on juvenile delinquency and juvenile courts which was before the Turkish Parliament. The bill had been drafted in view of the ratification of the Convention on the Rights of the Child. The bill extended to all offences committed by juveniles under the age of 18. Under the bill, children under the age of 15 were exempt from being tried for offences which were punishable by a prison sentence of less than three years. It forbade putting handcuffs on juveniles or imprisoning them. They could be held in special centres for juveniles only. Turkish youth, like that of other developing countries, was faced with many social ills. As to the Kurdish question, the Government distinguished between Kurds and terrorists who operated under the name of Kurds.

FEDERICO URRUELA (Guatemala) responded to some points raised yesterday by the American Association of Jurists. The incident referred to by the representative had been a misunderstanding which had already been resolved. A democratic process was under way in Guatemala and efforts were being made to solve the economic and social problems of the country. There was no denial that Guatemala was a poor developing country. The fight against impunity was a fundamental policy of the Government. The Government, moreover, had never denied the existence of a Commission for examing human rights violations and had also expressed its willingness to put an end to the voluntary civil defense committees.

MIROSLAV MILOSEVIC (Yugoslavia) said a non-governmental organization which called itself "Bastion of Mothers for Peace" had demonstrated hatred and expressed lies that could only be ignored. He rejected these lies and arbitrary qualifications and went on to say that the representative of that organization was speaking as the worst Croatian fascist extremist. He questioned how anyone could believe that the democratically-elected President of Yugoslavia could consider his compatriots to be liars, a mob, murderers, and primitives. He appealed to the Chairman to protect peoples and their representatives from the insolent insults of individuals and added that such behaviour did not contribute to that for which they were gathered here today.

JEYHUN MOLLAZADE (Azerbaidjan) said, in reply to the International Movement for Fraternal Union among Races and Peoples, that Armenians in Nagorno-Karabakh had received the status of territorial, administrative and national cultural autonomy and for years the leaders of the State were Armenians. As Armenians were the oldest community and well integrated into the "shadow economy", how was it possible that Azerbaidjan could practise a discriminatory policy against Armenians. The representative expressed his regret for the Baku incident in January 1990 and said that KGB officers who wanted a reason for imposing a state of emergency in Azerbaidjan, and thus eliminate the democratic opposition, were responsible. He deplored that, on the other hand, no organization condemned the measures against Azeris in Armenia and in Nagorno-Karabakh. The history of the transcaucasian republics further complicated the issue and politicians should refrain from using history to justify territorial claims.

DEBASHISHI CHAKRAVARTI (India) said that, while referring to Jammu and Kashmir, non-governmental organizations had used language which amounted to advocacy of terrorist activities. Such advocacy, by euphemistically describing terrorism as armed opposition mocked the fate of the victims of terrorism. Security forces were under instruction to proceed with restraint when fighting terrorism. There could be no arguments of self-determination applied to Jammu and Kashmir, since the principle could not apply to integral parts of sovereign States. The Sardar Sarovar Project had perhaps been more thoroughly investigated than any in the world. At issue was essentially the right to development. The area was one of the most arid and waterless in India and the project could potentially feed 20 to 25 million people and employ 1 million. The project had nothing to do with indigenous people.

MANASVI SRISODAPOL (Thailand) replied to the oral statement made yesterday by Habitat International Coalition and to its written statement (document E/CN.4/Sub.2/1992/NGO/4) wherein mention was made of Thailand under

the sub-heading entitled "Planned Evictions". To address the housing situation, particularly for low-income earners in Bangkok, the Government had laid down concrete measures under the current seventh National Economic and Social Plan which covered the period from 1992-1996 to improve availability of low-cost housing, as part of its strategies to maintain economic growth and to distribute income and development to all regions and rural areas. In addition, the Government had adopted a consensus-seeking, participatory approach in allocating land. A recent survey undertaken by the authorities concerned had concluded that, thus far, 80 per cent of the settlers were satisfied with the measures being arranged.

ABDUL RIMDAP (Nigeria), responding to allegations made the representative of the International Fellowship of Reconciliation, said that in Nigeria, Muslims and Christians had always coexisted in an atmosphere of unity and faith. This was demonstrated by the fact that members of the same ethnic group or family belonged to different religions of their choice without discrimination as guaranteed by the Constitution. Nigeria was a multi-ethnic and multi-religious country which like any developing country had its own problems rooted in under-development and to state that the christians were leaving the north for shelter in the south was not only ridiculous but highly provocative. The recent events in some villages in four of the 16 States of the north were the results of communal and ethnic feuds over farmland, but the speaker had chosen to refer to them as a religious crisis. He advised the speaker to always verify his facts.

ZOZIMO DA SILVA (Portugal) rejected the statement made by Indonesia whereby it had stated that the 12 November massacre did not reflect "the deliberate action of the military authorities in East Timor", which further explained why those members of the Army responsible were not tried for murder but rather for "insubordination". Meanwhile, the East Timorese, considered as "the master minds behind violence" by Indonesia, had been merely expressing their opinions in a peaceful manner when, on 12 November, more than 100 of them were killed only for that reason. The investigative report on the massacre had reported conclusions different from the ones expressed by the Indonesian delegation. This brought about the question as to why those responsible for murder were not tried. The 12 November events were not only a massacre, but the consequences of a genocide policy which had been applied by Indonesia since 1975 and which had resulted in the extermination of a third of the East Timorese population.

HASSAN WIRAJUDA (Indonesia) said that Portugal had irresponsibly abandoned the territory of East Timor in 1975. Portugal still held historical, moral and legal responsibility. While in East Timor, Portugal had done nothing to alleviate the suffering of the people. Portugal's decision to refer to the Dili incident as a "massacre" clearly reflected a lack of good faith and a departure from the consensus on the event. Indonesia had already expressed its deep regret. Trials had been conducted in a fair manner and qualified international observers could testify to that. Member States were entitled to protect their territorial integrity. In any case, any arguments on the issue should be avoided in the Subcommission and should be presented during a constructive dialogue between Indonesia, Portugal and the Secretary-General.

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